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November 7, 2002

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**BY COURIER**

Marlene H. Dortch  
 Secretary  
 Federal Communications Commission  
 445 12th Street, S.W., TW-B204  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

Re: WC Docket No 02-314. *Application of Qwest Communications Int'l Inc. for Authorization to Provide In-Region, InterLATA Service in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*

Dear Ms. Dortch:

By this letter, AT&T responds to the assertions made by Qwest in its reply comments and supporting declarations regarding Qwest's loop qualification information and particularly its mechanized loop testing ("MLT"). Two things are clear from Qwest's response. *First*, Qwest now admits that it performs MLT for every loop it cuts over to CLECs, and thereby obtains critical information – which it unlawfully refuses to share with CLECs – about the characteristics of these loops that are used to determine if the loop is capable of providing the services customers desire. Along with other flaws in the access it provides to loop qualification data, Qwest's refusal to provide MLT data clearly violates its checklist obligations to provide "access to the underlying loop qualification information. . . [residing] *anywhere* within the incumbent's back office [that] can be accessed by *any* of the incumbent LEC's personnel."

*Second*, it is also clear that Qwest and its senior management have not discharged their duty to act in "absolute truth and candor," but rather have intentionally and repeatedly hidden relevant information about loop qualification information and MLT from regulators. Qwest's responses concede that senior employees made "admittedly injudicious" and "ill-

<sup>1</sup> UNE Remand Order, 15 FCC Rcd. 3696, ¶ 430 (1999). (emphasis added).

<sup>2</sup> E.g., FCC Forfeiture Notice and Order ¶ 42.

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advised” “lapse[s] in judgment.” Nevertheless, Qwest has not cured its past deceptions, and, indeed, it engages in new distortions as it strains to justify its prior misconduct – and all the while it still refuses to come clean about all of its loop qualification and MLT processes. On this record – with an applicant repeatedly demonstrating its willingness to hide the facts from regulators – the Commission cannot make the requisite findings of compliance with the requirements of Section 271. But regardless of the action on Qwest’s applications, Qwest’s repeated and ongoing lack of candor mandates a swift response, and the Commission should follow the direction of the Department of Justice and open an enforcement action to investigate Qwest’s misconduct.

**I. Qwest’s Admission That Its Gathers Loop Qualification Information From MLTs That It Refuses To Share With CLECs Establishes A Clear Checklist Violation**

After months of state and federal proceedings in which Qwest refused to disclose the full extent of its use of MLT to obtain accurate and up-to-date information about the technical specifications of its loops, a former Qwest employee, Mr. Edward Stemple, came forward with testimony and documentation showing that Qwest (i) routinely performs MLTs on every loop it cuts over to CLECs and (ii) took steps to “diminish the visibility” of these MLTs from regulators, out of fear that the Commission would require Qwest to provide the MLT results to CLECs, which, in Qwest’s view, would be “detrimental to [its] business.”

Qwest’s refusal to provide the results from these MLTs plainly violates Qwest’s obligation to provide nondiscriminatory access to its OSS. The Commission’s rules regarding loop qualification information like MLT results are very clear that Qwest must “provide . . . nondiscriminatory access to the same detailed information about the loop that is available to the incumbent.”<sup>3</sup> Further, the “relevant inquiry is *not* whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists *anywhere* within the incumbent’s back office and can be accessed by *any* of the incumbent LEC’s personnel.”<sup>4</sup> Moreover, the incumbent “may not ‘filter or digest’ the underlying information.”<sup>5</sup> Such information in unfiltered form is critical, because CLECs must be able to make an “independent judgment” about whether a particular loop is “capable of supporting the advanced services equipment the competing carrier intends to install.”<sup>6</sup>

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<sup>3</sup> See Declaration of Edward Stemple & Exh. 1 & 2 (“Stemple Decl.”) (submitted with AT&T (Qwest III) Comments, October 15, 2002).

<sup>4</sup> *UNE Remand Order* ¶ 427.

<sup>5</sup> *Id.* ¶ 430 (emphasis added).

<sup>6</sup> *New Hampshire/Delaware 271 Order*, WC No. 02-157, App. F, ¶ 35 (Sept. 25, 2002) (emphasis added).

<sup>7</sup> *Alabama 271 Order*, WC No. 02-150, Att. H, ¶ 35 (Sept. 18, 2002).

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Under these rules, Qwest's checklist violation is clear. The MLT results Qwest obtains from loops it cuts over to CLECs plainly qualify as "loop qualification information."<sup>8</sup> Indeed, Qwest itself states that the purpose of these MLTs is to gather information on the loop as an important "part of the overall quality check . . . to assure that the provisioned loop will perform as specified."<sup>9</sup> These MLT data results are retained in Qwest's "back office" and are accessible by Qwest personnel.<sup>10</sup> The undisputed facts establish that Qwest retains MLT results that it does not share with CLECs, and therefore that Qwest is not providing nondiscriminatory access to loop qualification data—a fundamental checklist violation.

Indeed, Qwest's *ex parte* letter, reply comments, and declarations squarely admit these facts. Thus, just as Mr. Stemple, Qwest's former employee, described in his testimony, Qwest now concedes that, since July of 2001, the Qwest CLEC Coordination Center ("QCCC") has implemented "processes for performing an MLT on analog unbundled loops that were being converted from Qwest dial tone" to CLECs.<sup>11</sup> And Qwest admits that the "resulting information" from the MLT is "retained by Qwest" (again, just as Mr. Stemple described), is accessible by Qwest personnel, and is "used . . . to provide assurance ~~that~~ the provisioned loop will perform as specified."<sup>12</sup> Thus, it is now undisputed that Qwest has been performing testing that it never disclosed, that it retains the test results, but does not make them available to CLECs, and the reason for this conduct is that the Commission has a "tendency" to "respond to CLEC requests" for such information in an "unfavorable" way that is "detrimental to [Qwest's] business."<sup>13</sup>

Despite these critical admissions, Qwest maintains that it has done nothing wrong and that it is entitled to withhold these MLT results from CLECs, even though its own personnel have access to the data. But as explained herein and in the attached declaration by Kenneth

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<sup>8</sup> As the Commission has found, loop qualification information includes material that "identifies the physical attributes of the loop plant . . . that enable carriers to determine whether the loop is capable of supporting xDSL and other advanced technologies." *UNE Remand Order* ¶ 426.

<sup>9</sup> See Letter from R. Steven Davis, Qwest, to Marlene H. Dortch, FCC, at 3, WC Docket No. 02-314 (Oct. 21, 2002) ("*MLT Ex Parte*"); Cheshier (Qwest III) Reply Decl. ¶ 3 (the MLT testing for CLEC loops is performed to "ensure that Qwest was able to provide a loop which met all technical specifications to the CLEC on the CLEC's requested due date").

<sup>10</sup> *MLT Ex Parte* at 3; Cheshier (Qwest III) Reply Decl. ¶¶ 6-7; Stemple Decl. ¶ 6

<sup>11</sup> Cheshier (Qwest III) Reply Decl. ¶ 3; *see also MLT Ex Parte* at 3 (emphasis added) (for "all unbundled loops it provisioned on behalf of CLECs," Qwest performs "an MLT two or three days prior to the due date."); *cf.* Stemple Decl. ¶ 5.

<sup>12</sup> *MLT Ex Parte* at 3-4; compare Stemple Decl. ¶ 6 (describing cutting and pasting of MLT results into the "osslog" note) with *MLT Ex Parte* at 4 ("information from the MLT is 'cut' from the coordinator's screen and 'pasted' into another Qwest system) and Qwest Cheshier (Qwest III) Reply Decl. ¶ 6 (Qwest retains the information from the MLTs; specifically, "information from the MLT is 'cut' from the coordinator's screen and 'pasted' into the circuit notes of Qwest's WFA system").

<sup>13</sup> Stemple Decl., Exh. I.

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Wilson, “Qwest’s various excuses for its failure to provide nondiscriminatory access to MLT are legally unfounded, and depend, for example, on absurdly narrow definitions of “loop qualification information,” unsubstantiated distinctions between pre-ordering and provisioning, or Qwest’s self-serving views that such MLT results “would be of no use to CLECs.”<sup>15</sup>

First, Qwest contends that it may withhold these MLT results because its performance of MLTs two or three days prior to cutting loops over to CLECs “has no relevance to pre-order loop qualification.” But Qwest’s claim is based on an improperly narrow and arbitrary view that loop qualification information can be obtained *only* at the pre-order stage.” In Qwest’s view, once the CLEC submits an order to Qwest, it is not possible to obtain loop qualification information; rather, all such information is gathered for “provisioning purposes.”

But as Mr. Wilson explains, Qwest’s view makes no sense, and ignores the essential and undisputed purpose in performing MLTs.<sup>19</sup> In fact, the Commission’s rules are clear that loop qualification information consists of *any* information that Qwest obtains regarding the properties of the loop that can be used to determine if the loop is capable of supporting advanced services.<sup>20</sup> Qwest fully concedes that it performed the MLTs at issue here in order to “ensure that Qwest was able to provide a loop which met all technical specifications to the CLEC on the CLEC’s requested due date.”<sup>21</sup> In other words, the MLT results will provide accurate and up-to-date information about the properties of the particular loop at issue that help to verify that

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<sup>14</sup> Supplemental Declaration of Kenneth L. Wilson (“Wilson Supp. Decl.”) (included as attachment I hereto).

<sup>15</sup> Qwest Supp. Reply Comments at 32; Notarianni/Doherty (Qwest III) Reply Decl. ¶ 50,

<sup>16</sup> Qwest Supp. Reply Comments at 32; *see also* Notarianni-Doherty (Qwest III) Reply Decl. ¶ 48 (claiming that Qwest need not provide MLT results because they are conducted as “part of the loop provisioning process,” not for “purposes of loop qualification”); Cheshier (Qwest III) Reply Decl. ¶¶ 4-5 (MLTs have “no relationship to or connection with loop qualification”).

<sup>17</sup> Qwest argues that its MLTs “have no relationship to or connection with loop qualification,” a claim that, in Qwest’s view, is demonstrated by the fact that MLT results are “not used to populate any of Qwest’s databases that contain loop make up information,” such as its LFACS database. Cheshier (Qwest III) Reply Decl. ¶¶ 5-6. But Qwest’s admission that it does not use MLT results to update its databases it makes available to CLECs hardly demonstrates that MLT results do not provide useful loop qualification information. To the contrary, Qwest’s admission proves the claims of CLECs that Qwest provides inadequate loop qualification information in its databases, and then buries additional useful information like MLT results in other databases that it does not make available to CLECs.

<sup>18</sup> *E.g.*, Cheshier (Qwest III) Reply Decl. ¶ 5.

<sup>19</sup> Wilson Decl. ¶¶ 6, 8, 10-14.

<sup>20</sup> “*See UNE Remand Order* ¶ 426 (“Loop qualification information identifies the physical attributes of the loop plant . . . that enable carriers to determine whether the loop is capable of supporting xDSL and other advanced technologies”).

<sup>21</sup> Cheshier (Qwest III) Reply Decl. ¶ 3.

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the loop is, in fact, capable of supporting the services demanded by the customer.” And this is precisely why CLECs also seek access to the results of MLT – to gain information about the facilities used to provide service so they can provide the quality of service they promise their customers. Under the Commission’s rules, CLECs are entitled to these MLT results and other such information to make an “independent judgment” about the capabilities of the loop. Failure to provide these MLT results – whether gathered at the pre-order or pre-provisioning stage – is simply discriminatory.<sup>23</sup>

To be sure, the information gathered from MLTs would be very useful for CLECs during the pre-order stage, and for that reason, AT&T has also demonstrated that CLECs should have access to MLT during the pre-order stage.<sup>24</sup> On this issue, Qwest claims – but has never in fact demonstrated – that it does not perform MLT for its own retail customers. Given the simplicity of the MLT test, it is not at all burdensome for Qwest to perform it at the pre-order stage, and it is, in fact, discriminatory for Qwest to refuse to do so. Qwest’s own document demonstrates that its refusal to perform MLT for CLECs at the pre-order stage is motivated solely by its anticompetitive animus – that providing MLT would be “detrimental to [Qwest’s]

Second, Qwest contends that CLECs do not need access to Qwest’s MLT results because, according to Qwest, it retains only a limited amount of information from the MLTs, most of which is already available to CLECs from other sources.” This claim has no merit. Most fundamentally, as Mr. Wilson describes, the MLT results will almost certainly be more

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<sup>22</sup> See Wilson Decl. ¶¶ 8, 14. Qwest’s declarants state that the purpose of performing the MLTs prior to cutting over the loop is “to ensure that the loop as provisioned would perform as specified.” Notarianni-Doherty (Qwest III) Reply Decl. ¶ 48. As Qwest itself describes, the loop qualification information that exists from other sources may not reveal certain characteristics of the loop that can cause “marginal performance problems.” Cheshier (Qwest III) Reply Decl. ¶ 3. By performing an MLT, additional and up-to-date data can be obtained that can permit technicians to identify such problems so that they can be “repaired prior to turning the loop over to the CLEC and, in turn, the CLEC customer.” *Id.*

<sup>23</sup> Indeed, as Mr. Wilson explains, the discrimination is evident from examining Qwest’s own processes on the retail side, Wilson Decl. ¶ 13. In that instance, where Qwest needs to investigate the quality of a loop, Qwest will perform an MLT before the loop is provisioned and after an end user’s order is submitted – the same step in their retail process as a pre-order MLT would be for a CLEC. *Id.* Even though the functions of these processes are identical, Qwest will not provide MLT results to CLECs based on its artificial distinction between “pre-ordering” and “pre-provisioning.”

<sup>24</sup> E.g., Wilson Decl. ¶ 21. Notably, Qwest’s original contention was that MLT results are useful only for repair and maintenance. E.g., Notarianni/Doherty (Qwest I) Reply Decl. ¶ 48; Notarianni/Doherty (Qwest II) Reply Decl. ¶ 46, 56. Faced with indisputable evidence that it routinely uses MLTs prior to any repair or maintenance, Qwest now changes course and attempts to draw another untenable distinction that MLTs are useful only for provisioning. In fact, given all of the numerous accurate and up-to-date data on loop characteristics that can be derived from MLT (*see infra*), it is evident that MLT results would be useful at all stages.

<sup>25</sup> Stemple Decl. Exh. 1

<sup>26</sup> Cheshier (Qwest III) Reply Decl. ¶¶ 9-13; Notarianni/Doherty (Qwest III) Reply Decl. ¶¶ 49-50

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accurate and up-to-date than information from other sources.<sup>27</sup> The databases that Qwest provides to CLECs indisputably provide only historical information (which is, particularly in the Qwest region, notoriously inaccurate).<sup>28</sup> The MLT test, on the other hand, will show the actual and current characteristics for the loop as of the date of test (*i.e.*, just before the loop is provisioned).” Because MLT is the only tool that examines the actual and current loop status, there are a host of significant engineering issues that MLT results can help to resolve.” Moreover, even if the types of loop information that MLT provides are similar in some respects to the types of information provided by other Qwest databases, Qwest is not entitled to withhold relevant loop qualification information based on Qwest’s unilateral determination that the “MLT information at issue would be of no use to CLECs.”<sup>31</sup> Rather, the Commission has determined that CLECs are entitled to make an independent judgment regarding loop qualification information to determine if a loop is capable of providing service.<sup>32</sup>

In addition, Mr. Wilson explains that there is substantial reason to doubt Qwest’s claims that the information Qwest receives from the MLTs is so limited.<sup>33</sup> Qwest claims that it obtains only a few data points from MLT, but its only proof consists of three isolated examples of MLT results.<sup>34</sup> Qwest provides no evidence that these three examples are typical of the MLTs it conducts. In fact, as Mr. Wilson and other commenters have stated, MLT can be configured to provide a large number of data points.”

Finally, and in addition to Qwest’s refusal to provide access to MLT information, Qwest also refuses to provide CLECs with the same access to other loop qualification databases that it provides to its own personnel. As explained by Mr. Wilson, although Qwest maintains a Loop Facilities Assignment & Control System (“LFACS”), it provides CLECs with only a limited and indirect form of access to LFACS that fails to provide full and accurate information about the properties of unbundled loops.” LFACS is a stand alone database that is linked with

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<sup>27</sup> Wilson Decl. ¶ 18.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See *id.* ¶¶ 18-19. (describing more accurate information that can be provided by MLT)

<sup>31</sup> See Notarianni/Doherty (Qwest III) Reply Decl. ¶ 50.

<sup>32</sup> *Alabama 271 Order*, Att. H, ¶ 35.

<sup>33</sup> Wilson Decl. ¶¶ 16-17.

<sup>34</sup> See Notarianni/Doherty (Qwest III) Reply Decl. ¶¶ 49-50; Cheshier (Qwest III) Reply Decl. ¶¶ 9-13

”Wilson Decl. ¶ 16; The testimony provided by Qwest’s former employee, Mr. Stemple, shows that Qwest itself obtained “very many data fields associated with the MLT results,” and that Qwest service representatives were instructed to cut and paste those results into Qwest-maintained records. Stemple Decl. ¶ 6; see also Covad (Qwest I) Comments at 22 n.32.

<sup>36</sup> Wilson Decl. ¶¶ 22-30

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many systems, and thus Qwest personnel can access LFACS through a variety of methods many of which Qwest has never disclosed.” But what Qwest has admitted is that its network engineers have direct access to LFACS.<sup>38</sup> Qwest refuses to provide CLECs with the same type of access, and insists on limiting CLECs to access that is improperly filtered. As Mr. Wilson explains, Qwest’s justifications for this refusal are without merit – indeed, they are based largely on the same mistaken and improperly narrow view of “pre-ordering” and “provisioning” that Qwest has trotted out to justify its refusal to provide MLT.<sup>39</sup> Qwest cannot rely on such semantic distinctions, but must provide CLECs with the same type of nondiscriminatory access to LFACS enjoyed by *all* or *any* of Qwest’s personnel.

**II. Qwest’s Admissions That Its Employees Made “Ill-Advised” and “Repeated” “Lapse[s] In Judgment” Establish That Qwest Has Not Fulfilled Its Duty To Act With Absolute Truth And Candor.**

In addition to this fundamental competitive checklist violation, Qwest’s applications should be denied and its misconduct should be the subject of a Commission enforcement proceeding. As AT&T showed in its initial comments and reply comments, the documentation presented by Mr. Stemple established that Qwest took steps to “diminish the visibility” to Qwest’s MLT process, precisely because CLECs had demanded the results of MLTs that Qwest claimed it did not run. In fact, Qwest was concerned that providing such material to CLECs would cause regulators to order Qwest to provide access to MLT.<sup>40</sup>

Not surprisingly, the Department of Justice found this evidence “troubling,” because it suggests that “Qwest, in its eagerness to protect its position, sought to limit the information available to regulatory decision-makers.”<sup>41</sup> In particular, the Department found the “procedural implications” of Qwest’s apparent misconduct to be “disturbing,” given the Commission’s “fundamental requirement” that entities appearing before it have a “duty of absolute truth and candor.”<sup>42</sup> The Department therefore urged the Commission to “assure itself that it has full and accurate information . . . *before* proceeding to address the remainder of the issues” in Qwest’s application.<sup>43</sup>

While it quibbles at the margins, Qwest openly concedes that much of Mr. Stemple’s testimony is accurate. With regard to his description of the process by which Qwest

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<sup>37</sup> *Id.* ¶ 25.

<sup>38</sup> See *id.* ¶ 26; Notarianni/Doherty (Qwest III) Decl. ¶ 31

<sup>39</sup> Wilson Decl. ¶¶ 26-30.

<sup>40</sup> Stemple Decl. & Exh 1 & 2.

<sup>41</sup> DOJ Eval. at 4-5.

<sup>42</sup> *Id.* at 5 & n.21.

<sup>43</sup> *Id.* (emphasis added).

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performs MLTs at the QCCC, Qwest contests virtually nothing of his account. And Qwest admits that “pages referencing performance of MLT testing were removed from certain chart-boards in the QCCC,” and that this action was “repeated” on three separate visits by regulators.<sup>44</sup> And, of course, Qwest admits that its Director of Operations at the QCCC responded to concerns by Qwest employees like Mr. Stemple about this conduct by asserting that Qwest “made an effort to diminish the visibility to MLT during [FCC] visits.” Ms. Lubarnersky, the “Senior Director of Qwest’s 271 team,” testifies that she “regret[s]” ordering that the MLT charts be removed, but admits that she did so to avoid discussing MLT issues that she knew were “still pending” before “a number of state commissions [that] were still considering whether to order Qwest to provide pre-order access to MLT.”<sup>46</sup> And Qwest concedes that these senior employees’ actions were “admittedly injudicious,” “ill-advised,” and “lapse[s] of judgment.”<sup>47</sup>

Nonetheless, Qwest offers nothing to cure these conceded violations. Instead, Qwest continues to insist that it has done nothing wrong – and inexplicably tries not only to contend that all of AT&T’s claims “are demonstrably without merit” but to blame AT&T for “trying to create a smokescreen.”<sup>48</sup> Qwest’s efforts to explain away this misconduct are preposterous.<sup>49</sup> Most notably, Qwest clings to the claim that “[n]o changes were made to

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<sup>44</sup> Qwest Supp. Reply Comments at 67; *MLT Ex Parte* at 4-5 (“information on MLT testing was removed [by Qwest employees] . . . before certain site visits to the QCCC by regulators”); Cheshier (Qwest III) Reply Decl. ¶ 17 (“Ms. Lubarnersky asked that we take down charts from five white boards that included the results of various performance metrics. The charts . . . were titled ‘MLT Test Results’ . . . I asked one my supervisors to remove the charts as requested. . . . Similar charts were removed before the June 5 visit by the FCC. . . . Because we had made similar changes before the first two visits, we removed the notation ‘MLT’ above the charts” at the July 23 visit); Lubarnersky (Qwest III) Reply Decl. ¶¶ 3-4.

<sup>45</sup> Stemple Decl. Exh. 1

<sup>46</sup> Lubarnersky (Qwest III) Reply Decl. ¶¶ 3-4. Incredibly, even though Qwest bid its actual practices regarding MLT during the precise time that state commissions were considering whether to require Qwest to provide access to MLT testing, Qwest’s reply comments have the audacity to claim that “[t]he MLT issue also has been *thoroughly* examined in state proceedings,” Qwest Supp. Reply Comments at 31 (emphasis added). Because they are based on records that Qwest intentionally manipulated, those state commission findings are infected by Qwest’s misconduct, and cannot be relied upon.

<sup>47</sup> Qwest Supp. Reply Comments at 67; *MLT Ex Parte* at 5.

<sup>48</sup> Qwest Supp. Reply Comments at 66; *MLT Ex Parte* at 5. Similarly absurd, in light of Qwest’s misconduct, is Qwest’s claim that “AT&T’s comments merely reveal its *lack of familiarity* with Qwest’s loop qualification systems.” Qwest Supp. Reply Comments at 30. To the extent that is true, it is not at all attributable to AT&T and oilier CLECs’ “very vocal” efforts to obtain access to such systems, but rather to Qwest’s “strong stance” that such systems are “proprietary” and to Qwest’s repeated efforts *not* to “bring attention to [MLT]” for the “sole purpose of protecting access” to its systems. Stemple Decl. Exh. 1

<sup>49</sup> Qwest claims that its unsworn *ex parte* letter from its counsel set out “extensive evidence” refuting Mr. Stemple’s allegations. Qwest Supp. Reply Comments at 66. Of course, it did not. That letter does not constitute “evidence,” but was simply Qwest’s lawyers’ spin on the “troubling” evidence provided by Mr. Stemple’s testimony and by Qwest’s e-mail (*i.e.*, authentic evidence). AT&T has already explained why counsel’s explanations are meritless. See AT&T Reply Comments at 22-24.



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Qwest's practices or procedures during site visits, and employees were instructed to perform their work in the normal manner during these visits.'" This is *not* true – and is made transparent by Qwest's own concession that its normal practice was to post charts regarding MLT testing, and that it intentionally changed that practice in order to avoid answering questions about its MLT processes."

Moreover, Qwest also admits that, in deciding how to prepare for the regulators' site visits, Qwest purposefully chose to demonstrate *only* "orders that were due the day of the visit" and the "QCCC's processes for due date activities."<sup>52</sup> However, as Qwest admits, its MLTs are performed two or three days prior to the due date of a loop conversion. Qwest's choice to limit regulators' review to due date activities therefore necessarily excluded Qwest's MLT processes from the site visits. Further, in the ordinary course of business, QCCC employees were required to perform MLTs every day, throughout the day, in between their duties to cut over loops.<sup>53</sup> By choosing to focus regulators' attention on due date activities, Qwest changed the normal routine of the employees observed by the regulators. Indeed, it was the fact that QCCC "employees expressed concern that they would not be properly recognized for performing their duties, which included the performance of an MLT," that led Ms. Cheshier to send the "unfortunately worded" e-mail revealing Qwest's misconduct.<sup>54</sup> Thus, QCCC employees were concerned that they would be disciplined precisely because they did not follow their normal course of duties by failing to complete MLTs during the site visits.<sup>55</sup>

Similarly, it is simply not possible to credit Ms. Lubamersky's efforts to simultaneously express "regret" over her decision to order the removal of MLT-related material, and yet assert that statements that she was hiding information are "gross[ly] exaggerat[ed]."<sup>56</sup> Ms. Lubamersky, Qwest's Senior Director of its Section 271 team and professed a twenty-year veteran on telecommunications regulatory issues, claims that she had MLT references removed because she "did not want to trigger a discussion" about what she apparently viewed as "unrelated" issues on MLT – a topic that she was "not prepared to address" that day.<sup>57</sup> But Ms. Lubamersky never explains, however, why someone with her experience, if questioned without adequate preparation on an allegedly irrelevant topic, would not simply respond honestly to

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<sup>50</sup> Qwest Supp. Reply Comments at 68; *MLT Ex Parte* at 5; Cheshier (Qwest III) Reply Decl. ¶ 16; Lubamersky (Qwest III) Reply Decl. ¶ 3.

<sup>51</sup> *Id.*

<sup>52</sup> Cheshier (Qwest III) Reply Decl. ¶ 15.

<sup>53</sup> Stemple Decl. ¶¶ 1, 4-5.

<sup>54</sup> See Cheshier (Qwest III) Reply Decl. ¶ 22; *MLT Ex Parte* at 5.

<sup>55</sup> See Stemple Decl. ¶ 10 ("Because the MLT was a job requirement, these employees felt that they could later be penalized if they failed to perform the test")

<sup>56</sup> Lubamersky (Qwest III) Decl. ¶¶ 2, 4

<sup>57</sup> *Id.* ¶ 3.

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regulators' inquiries by producing a subject matter expert, or by promising to follow up at a later date. And Ms. Lubamersky never explains why, if the initial May 15 incident caused her such concern given her "great pride" in responding "thoroughly" to "every single question asked by a regulator," the chart boards on MLT were again removed and/or substantially altered while regulators visited the QCCC on later dates." Apparently, Ms. Lubamersky's "strict policy" of "not speculating if [she] is unsure of the facts,"<sup>58</sup> means that she feels it is preferable simply to hide the existence of unfavorable facts.

The only serious dispute that Qwest has with the facts of Mr. Stemple's account of the site visits is his characterization of the meeting between QCCC supervisors and the employees hand-selected by Qwest to be observed by FCC staff and other regulators – the only portion of his testimony that is not corroborated by some evidence that Qwest could not deny. Qwest contends that "no such meeting took place" and that "each and every service representative" involved in demonstrating the QCCC due date processes has submitted testimony that they were not instructed to conceal their activities during the regulators' visits."<sup>59</sup> However, Mr. Stemple testified that certain of the QCCC service representatives admitted that they were instructed not to pull up the MLT screen or mention MLT. Thus, there is an apparent conflict between the testimony of Mr. Stemple and the declaration submitted by at least one of the QCCC service representatives, and the Commission should accept the Justice Department's recommendation to investigate these issues and resolve this apparent conflict.

Recognizing that credibility of witnesses may become significant, Qwest also engages in an effort to undermine Mr. Stemple's reliability by claiming that he has "strong hostility" toward Qwest. Of course, given Qwest's shameful record of secret deals, accounting improprieties and other such transgressions, Mr. Stemple would hardly be alone if he does in fact harbor any ill-will toward Qwest. Qwest also seeks to **[BEGIN PROPRIETARY]**

<sup>61</sup> **[END PROPRIETARY]** None of this, however, casts the slightest doubt on the truth of his testimony. Given how much of Mr. Stemple's testimony Qwest has openly admitted is accurate, there is ample basis for believing the few aspects of his story that Qwest strains to deny.

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<sup>58</sup> *Id.* ¶ 4. Indeed, the fact that Ms. Lubamersky was not even present at the later site visits where MLT charts were removed (*id.*) strongly indicates that Qwest's concerns went far beyond protecting Ms. Lubamersky from questions that she was allegedly not prepared to answer. Rather, the message received by the QCCC employees during that initial visit was apparently that MLT charts should be removed or altered beyond recognition whenever regulators arrived, regardless of Ms. Lubamersky's presence.

<sup>59</sup> *Id.*

<sup>60</sup> Qwest Supp. Reply Comments at 67.

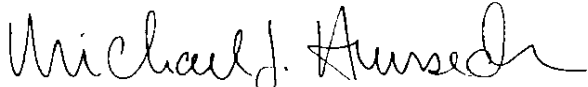
<sup>61</sup> *Id.* at 66; Best (Qwest III) Reply Decl. ¶¶ 4-7

Marlene H. Dortch  
November 7, 2002  
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**REDACTED**  
**FOR PUBLIC INSPECTION**

For all the foregoing reasons, and as stated in AT&T's comments and reply comments, the Commission should find that Qwest does not provide nondiscriminatory access to its loop qualification data and should investigate Qwest's lack of candor.

Sincerely,

  
Michael J. Hunseder

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. **20554**

In the Matter of )  
 )  
Application by )  
Qwest Communications International, Inc. )  
For Authorization To Provide ) WC Docket No. **02-314**  
In-Region, InterLATA Services in the )  
States of Colorado, Idaho, Iowa, Montana, )  
Nebraska, North Dakota, Utah, )  
Washington, and Wyoming )

SUPPLEMENTAL DECLARATION KENNETH L. WILSON  
ON BEHALF OF AT&T CORP.

1 My name is Kenneth L. Wilson. I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11<sup>th</sup> Street, Boulder, Colorado, 80302. I am the same Kenneth Wilson that has submitted prior testimony in this proceeding (and in the *Qwest I* and *Qwest II* proceedings), and that testimony contains my qualifications, work experience, and educational background.'

**I. PURPOSE AND SUMMARY OF DECLARATION**

2. The purpose of this Declaration is to reply to claims made by Qwest in its most recent reply comments and supporting declarations regarding the methods by which Qwest provides competitive local exchange carriers ("CLECs") with access to Qwest's loop

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<sup>1</sup> See, e.g., AT&T (Qwest II) Finnegan/Connolly Menezes Decl., AT&T (Qwest II) Wilson Decl.; AT&T (Qwest I) Finnegan/Connolly/Menezes Decl.; AT&T (Qwest I) Wilson Decl.; AT&T (Qwest III) Finnegan/Connolly Wilson Decl.

qualification information.’ **As** part of Qwest’s obligation to provide nondiscriminatory access to its OSS, the Telecommunications Act of 1996 and the Commission’s rules require Qwest to “provide . . . nondiscriminatory access to the same detailed information about the loop that is available to the incumbent.”<sup>3</sup> Further, the “relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists *anywhere* within the incumbent’s back office and can be accessed by *any* of the incumbent LEC’s personnel.”<sup>4</sup> Moreover, the incumbent “may not ‘filter or digest’ the underlying information.”<sup>5</sup> Such information in unfiltered form is critical, because CLECs must be able to “make an independent judgment . . . about whether an end user loop is available of supporting the advanced services equipment the competing carrier intends to install.”<sup>6</sup> Qwest has not met this critical checklist obligation in two fundamental respects.

3. First, although Qwest has denied that it routinely conducted mechanized loop tests (“MLT”) prior to cutting over loops to CLECs,<sup>7</sup> a former Qwest employee provided evidence that Qwest in fact performed MLT for every loop it provides to CLECs. Faced with

<sup>2</sup> *See* Supplemental Reply Comments of Qwest Communications International Inc. In Support of Consolidated Application for Authority To Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming, at 30-32, (filed Oct. 25, 2002) (“Reply Comments”). The reply declarations submitted by Qwest with its Reply Comments are cited using the name of the declarant.

<sup>3</sup> *UNE Remand Order* ¶ 427

<sup>4</sup> *Id.* 1430 (emphasis added)

<sup>5</sup> *New Hampshire/Delaware 271 Order*, App. F, ¶ 35 (emphasis added)

<sup>6</sup> *Alabama 271 Order*, Att. H, ¶ 35. CLECs also need such information to determine (1) whether the BOC has spare facilities (including fragments of loops) that the CLEC may need to provide such service, and (2) whether they can provide service to areas served by IDLC loops.

<sup>7</sup> **An** MLT enables the user to perform a quick test on a loop and retrieve essential data regarding the characteristics of the loop (including, for example, loop length, insertion loss, and the presence of integrated digital loop carriers).

this evidence, Qwest now admits that this has been its practice since July 2001. This admission refutes Qwest's previous representation to this Commission that it "is not withholding MLT information from CLECs."<sup>8</sup> The admission also proves that Qwest must provide CLECs with the results of these MLT tests, because it is now not disputed that MLT results contain valuable loop qualification information that Qwest retains and that is accessible by Qwest employees. Furthermore, Qwest must concede that there is value in conducting MLT on a loop before the loop is provisioned and grant CLECs the same capability on any loop requested.

4. Second, Qwest is improperly filtering information from its primary loop qualification database, the Loop Facilities Assignment & Control System ("LFACS"). Qwest provides CLECs with a limited and indirect form of access to LFACS that fails to provide full and accurate information about the properties of unbundled loops. Qwest contends this access is sufficient because its retail arm also has mediated access to LFACS. However, even if this is true for some purposes, LFACS is a stand alone database that is linked with many systems, and thus Qwest personnel can access LFACS through a variety of methods – many of which Qwest has never disclosed. It has admitted, however, that its network engineers have direct access to LFACS. CLECs must have the same type of nondiscriminatory access to LFACS enjoyed by *all* or *any* of Qwest's personnel, not the access Qwest's retail arm possesses.

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<sup>8</sup> See, e.g., Qwest I Notarianni/Doherty Reply Decl., ¶ 50

**II. QWEST FAILS TO DEMONSTRATE THAT IT PROVIDES  
NONDISCRIMINATORY ACCESS TO LOOP QUALIFICATION  
INFORMATION.**

**A. Qwest Does Not Provide CLECs With Access To Mechanized Loop Test And  
Results From Such Tests, Even Though Qwest Now Admits That It Performs  
Such Tests Itself.**

5 In prior testimony, my colleagues and I explained that, in a variety of situations, Qwest performs mechanized loop testing (“MLT”) on loops before service has been provisioned to determine whether it can provide DSL to its retail customers.<sup>9</sup> Further, new evidence in this proceeding brought to light by a former Qwest employee demonstrated that Qwest performs MLTs for each and every loop that it cuts over to CLECs.<sup>10</sup> Nevertheless, Qwest does *not* provide CLECs with the ability to perform MLT, and it has *never* provided CLECs with the complete results of MLTs it performs prior to the cutover process. Indeed, in many prior proceedings, Qwest has claimed that MLT was used only for maintenance and repair, and suggested that it did not routinely run MLTs, but had done so more than two years ago.”

6. Faced with the new evidence, Qwest’s declarant now admits that, since July of 2001, the Qwest CLEC Coordination Center (“QCCC”) has implemented “processes for performing an MLT on analog unbundled loops that were being converted from Qwest dial tone” to CLECs.<sup>12</sup> Qwest further admitted that it performs these MLTs “usually **two** or three days **prior** to the due date for a CLEC unbundled loop.”” Qwest also concedes that the purpose of

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<sup>9</sup> See AT&T (Qwest III) Finnegan/Connolly/Wilson Decl. ¶¶ 32-33

<sup>10</sup> *Id.* ¶¶ 34-41 (describing testimony of Edward Stemple)

<sup>11</sup> *E.g.*, Qwest I Notarianni/Doherty Reply Decl. ¶ 48 (“MLT is primarily a repair test. It is not meant to be nor was it ever designed to be a pre-order qualification tool for loops”); Notarianni-Doherty (Qwest II) Reply Decl. ¶¶ 46, 56

<sup>12</sup> Chesier (Qwest III) Reply Decl. 7 3

<sup>13</sup> *Id.* (emphasis added)

these MLTs is to “ensure that Qwest was able to provide a loop which met all technical specifications to the CLEC on the CLEC’s requested due date.”<sup>14</sup> Further, Qwest admits that it retains the information from the MLTs, and specifically that “information from the MLT is ‘cut’ from the coordinator’s screen and ‘pasted’ into the circuit notes of Qwest’s WFA system.”<sup>15</sup>

7. Given these admissions, there is no doubt that Qwest should be required to provide the results of these MLTs to CLECs. The information obtained from these MLTs plainly provides information on the “technical specifications” of the loop and current loop status. Further, the information is, by Qwest’s admission, “maintained as a complete record” as part of Qwest’s back office system.<sup>16</sup> And, as Mr. Stemple’s testimony shows and as Qwest now admits, Qwest’s employees can access the results of the MLT. Under the Commission’s rules, these facts demonstrate that Qwest must provide access to the MLT results.”

8. Competitors seek the results of these MLTs for the same reason that Qwest performs them in the first instance: “to ensure that the loop as provisioned would perform as specified.”” A CLEC can use the MLT to verify whether a particular loop supports the services that the customer requests, including advanced services. As Qwest itself describes, the loop qualification information that exists from other sources may not reveal certain characteristics of

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* ¶ 6; *see id.* (“prior to January 1, 2002, a hard copy of the CLEC’s MLT result was made and included in a file”).

<sup>16</sup> *Id.* ¶ 7

<sup>17</sup> *UNE Remand Order* ¶ 430 (the “relevant inquiry is . . . whether [underlying loop qualification] information exists *anywhere* within the incumbent’s back office and can be accessed by *any* of the incumbent LEC’s personnel”) (emphasis added)

<sup>18</sup> Notarianni-Doherty (Qwest II) Reply Decl. ¶ 48



the loop that can cause “marginal performance problems.”<sup>19</sup> By performing an MLT, additional and up-to-date data can be obtained that can permit technicians to identify such problems so that they can be “repaired prior to turning the loop over to the CLEC and, in turn, the CLEC customer.”<sup>20</sup> The results of the MLTs, therefore, provide additional, critical data that CLEC can use to ensure that a particular loop will support advanced services.

9. Qwest’s declarants offer a variety of justifications for why Qwest should nonetheless not be required to provide CLECs with access to these MLT results, but none are valid. First, Qwest finds it significant that these MLTs are performed only on CLEC orders, and not for Qwest retail customers.<sup>21</sup> But the Commission’s rules are very clear that loop qualification information should be made available regardless of its use by Qwest’s retail arm – all that matters is whether such information can be accessed by any of Qwest personnel, and here there is no dispute that QCCC employees and others can access the MLT results

10. Qwest also claims that it need not provide MLT results because the MLTs are conducted as “part of the loop provisioning process,” and not for “purposes of loop qualification.”<sup>22</sup> According to Qwest, these MLTs have “no relationship to or connection with loop qualification.”<sup>23</sup> But as with the uses of LFACS discussed below, Qwest takes an

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<sup>19</sup> Chesier (Qwest 111) Reply Decl. ¶ 3

<sup>20</sup> *Id.* In addition, the use of MLTs would enable the CLEC to verify the accuracy of the loop qualification information that Qwest makes available to CLECs. There are situations where a CLEC has reason to believe that the loop information in Qwest’s systems is inaccurate, as when one residence already has advanced services and Qwest’s systems state that the house next door cannot accommodate the same service. The MLT results can help to clarify the issue.

<sup>21</sup> Chesier (Qwest III) Reply Decl. ¶ 4; Notarianni-Doherty (Qwest 111) Reply Decl. ¶ 47.

<sup>12</sup> Notarianni-Doherty (Qwest III) Reply Decl ¶ 48; *see also* Chesier (Qwest III) Reply Decl ¶¶ 4-5.

<sup>23</sup> *Id.* ¶ 5

improperly narrow view of loop qualification information. In Qwest's view, "loop qualification" is strictly limited to a "pre-order" inquiry – in other words, once an order is placed by a CLEC, there is by definition no more loop qualification.<sup>24</sup> There is no basis for this narrow view. Rather, loop qualification information consists of *any* information, regardless of timing, that Qwest obtains regarding the properties of the loop that can be used to determine if the loop is capable of supporting advanced services.<sup>25</sup> It is clear from the discussion above (*see* paragraphs 6 to 8) that Qwest performs the MLTs at issue precisely for this purpose. Qwest's effort to deny CLECs access to these MLTs by relying again on a distinction between loop qualification information gathered prior to the CLEC order and information gathered before an order is untenable.

11 In this regard, Qwest finds it significant that "the MLT results are not entered into Qwest's LFACS systems or Qwest's loop qualification database."<sup>26</sup> But that fact does not show that the MLT results at issue do not provide useful loop qualification information. To the contrary, Qwest's failure to update its other databases with this MLT information simply proves the claims of CLECs that Qwest provides inadequate loop qualification information in its databases it allows CLECs to access, and then buries additional useful information like MLT results in other databases that it does not make available to CLECs.<sup>27</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> *See UNE Remand Order* ¶ 426 ("Loop qualification information identifies the physical attributes of the loop plant . . . that enable carriers to determine whether the loop is capable of supporting xDSL and other advanced technologies").

<sup>26</sup> Chesier (Qwest III) Reply Decl. ¶¶ 6, 8; *see* Notarianni-Doherty (Qwest III) Reply Decl. ¶ 49. Of course, Qwest's declarants previously suggested that Qwest had loaded into the loop qualification tools all of the loop length information from the MLTs it has conducted. *See, e.g.,* Notarianni/Doherty (Qwest II) Reply Decl. ¶ 46.

<sup>27</sup> *See* AT&T (Qwest III) Finnegan/Connolly/Wilson Decl. ¶¶ 25, 30, 36-37, AT&T (Qwest II) Finnegan/Connolly/Menezes Decl. ¶ 151. Qwest has previously admitted before this

12. Further, Qwest's claims that these MLTs are performed for provisioning purposes and not for pre-ordering functions ignores the essential purpose of those functions. The process of provisioning of UNE-loops entails the physical work to cut them over to the CLEC. This requires, among other things, technicians to re-arrange jumpers on frames at the central office and reassignment of control of the facility. The purpose of performing an MLT (even after an order has been placed) has nothing to do with this provisioning process. Indeed, the loop can be "provisioned" with or without the performance of MLT. The MLTs that Qwest performs are intended to provide assurances that the loop is in good working order for the services that are required. This function is a pre-provisioning process, not a provisioning process.

13. This is evident from Qwest's own processes on the retail side. When Qwest uses MLT before a retail order is provisioned, the functions of these processes are identical and the absurdity of Qwest's argument is made clear. Qwest will perform an MLT – before the loop is provisioned and after an end user's order is submitted – where Qwest needs to investigate the quality of a loop to assure that the desired service can be provided.<sup>28</sup> The Qwest investigation of loops in this manner would be the same step in their retail process as a pre-order MLT would be for a CLEC. The investigation of the loop by Qwest would be after the end user has contacted them for service, just as the CLEC use of MLT to investigate the loop would be after the end-user customer has contacted the CLEC for service. But the functions of the MLT process are the same regardless. Qwest continues to fall back on a semantic game, relying on the word "pre-order" in attempt to limit the scope of MLT and loop qualification information – but this is

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Commission that it conducted MLTs to correct inaccuracies and omissions regarding loop length information in its databases. Notarianni/Doherty (Qwest II) Decl. ¶ 105.

<sup>28</sup> However, even though Qwest has never denied that its retail arm runs MLT before provisioning and after the acceptance of an order, Qwest has *never* revealed its processes that allow its personnel to do so.

because Qwest knows that, when dealing with retail customers, there is by definition no “pre-ordering” step. Because Qwest cannot predict which of its end users customers will call next, they cannot run MLT on their loop before they request a new service.

14. In short, the CLECs’ need to investigate, prior to provisioning, the properties of loops using MLT is identical to Qwest’s purpose in performing such tests – to ensure that the loop has the properties that allow it to provide the services requested by the customer. Currently, the only obstacle preventing the CLEC from obtaining MLT results before provisioning is Qwest’s refusal to allow it, apparently because it knows that providing such access will be detrimental to its own retail business. This is discriminatory in all senses of the word, and Qwest can not comply with its obligations until this policy is changed.

15 Finally, based on results from MLTs performed for a mere three loops, Qwest contends that CLECs do not need access to the MLT results that Qwest performs because Qwest retains only a limited amount of information from the MLTs, most of which is already available to CLECs from other sources.<sup>29</sup> This response is insufficient for a number of reasons.

16. *First*, the evidence behind Qwest’s claims is extremely limited, and there are numerous reasons to doubt Qwest’s claims that the information provided by MLTs is so limited. Qwest’s bases its claim solely on “three examples” out of the thousands of MLTs it has conducted since July 2001. Qwest provides no assurances that these three examples are by any means typical of all MLTs it conducts. In fact, MLTs can be configured to return hundreds of different data points regarding a loop’s characteristics.<sup>30</sup> The testimony provided by Qwest’s former employee, Mr Stemple, shows that Qwest itself obtained “very many data fields

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<sup>29</sup> Chesier (Qwest III) Reply Decl ¶¶ 9-13, Notarianni/Doherty (Qwest III) Decl ¶¶ 49-50

<sup>30</sup> *E.g.*, Covad (Qwest I) Comments at 22 n 32

associated with the MLT results,” and that Qwest service representatives were instructed to cut and paste those results into Qwest-maintained records.<sup>31</sup>

17 Moreover, Qwest’s claims that MLT does not provide data regarding loop qualification information like bridge taps, presence of DLC, or pair gain are inconsistent with Qwest’s own materials.<sup>32</sup> Qwest provides CLECs with a list of features for MLT when used for repair and maintenance.” The tests listed include ones that will show if there is a bridge tap that is causing a balance problem, which could definitely impact DSL.<sup>34</sup> Likewise, the MLT tests listed in the repair guide show dozens of tests that will reveal issues with digital loop carrier of all types, allowing a carrier to obtain significant information on digital loop carrier from MLT – again, directly contrary to Qwest’s claims

18 *Second*, even if some of the data fields obtained from the MLT results at issue are the same fields that CLECs obtain from other sources, the MLT results will almost certainly be more accurate and up-to-date. The databases that Qwest provides to CLECs indisputably provide only historical information (which is, particularly in the Qwest region, notoriously inaccurate), but the MLT test will show the actual and current characteristics for the loop as of the date of the MLT test. Because it is the only tool that examines the actual and current loop status, there are a host of real world engineering issues that MLT results can shed light on

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<sup>31</sup> AT&T Stemple (Qwest III) Decl. ¶ 6

<sup>32</sup> Notarianni/Doherty (Qwest III) Decl. ¶¶ 35-36, 49-50

<sup>33</sup> However, based on my experience and the comments of other CLECs, this list by no means provides all of the data that an MLT can provide.

<sup>34</sup> *E.g.* Test 93 for “Poor Balance” states that “No major faults are detected on the line except poor longitudinal balance and poor capacitive balance. This condition could be caused by ringers improperly connected to ground, or a cable imbalance due to bridge taps, or sometimes incomplete line records (if a reg is not listed in the line records, it will look like an unbalanced line)”

19 An MLT, for example, would enable a CLEC to determine the presence of any electronics or equipment on the loop that would interfere with DSL service – information that is very important in determining whether the loop will support the services that the CLEC seeks to provide. In addition, Qwest’s declarants admit that MLT will provide more accurate information regarding loop length.” Indeed, Qwest recently admitted that the loop length information in its databases is not fully accurate. In recent Minnesota proceedings, Qwest’s witness acknowledged that Qwest’s databases gather loop length information for only one loop in a customer serving terminal, and that Qwest simply assumes that the loop distance for that loop is the same for all other loops in that serving terminal.<sup>36</sup> Thus, for many loops, the loop length data in Qwest’s databases do not constitute the *actual* lengths for those loops, but simply an average based on a sample. There are numerous reasons why the use of a sample will not be accurate for the total. For example, the loop that is chosen for the test may have bridge taps or may have terminal equipment that creates an inaccurate result. It is always better to test the actual loop that will be used, when testing is deemed necessary – and the MLT results at issue here will provide that loop length information.

20 *Third*, and in all events, Qwest’s withholding of these MLT results from CLECs, and its refusal to allow the CLEC to use MLT before provisioning, is improper because the FCC’s rules make clear that the CLEC is entitled to make an “independent judgment” regarding a loop’s capability to support the advanced services equipment the CLECs intends to

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<sup>35</sup> See Chesier (Qwest III) Reply Decl. ¶ 13.

<sup>36</sup> See AT&T (Qwest III) Finnegan/Connolly/Wilson Decl. ¶ 37 & Att. 1 (citing Qwest testimony that Qwest “actually performs an MLT on only one loop in a customer serving terminal. That distance is then adjusted”).

install<sup>37</sup> Accordingly, there is no basis for Qwest's claims that the "MLT information at issue would be of no use to CLECs"<sup>38</sup> It is the CLECs, not Qwest, which must make that determination

21 By the same token, Qwest must allow CLECs the capability to do MLT before the loop is provisioned There is now undisputed evidence that Qwest performs such tests as a regular matter on loops that are to be cutover to the CLEC A full examination of Qwest internal processes and procedures would no doubt show that Qwest uses MLT in many cases on their own retail orders where issues arise before a service is provisioned CLECs must be granted the same capability. Qwest is incorrect in its pronouncements that MLT does not provide useful information before service is provisioned

**B. Qwest Improperly "Filters" The Information From Its LFACS Database, And Does Not Provide CLECs With All Of The Methods To Access LFACS That Qwest Employees Possess.**

22 Qwest has failed to demonstrate that it provides CLECs with nondiscriminatory access to its LFACS. In this proceeding and throughout the state proceedings, Qwest has gone to great lengths to avoid providing information about the complete contents of LFACS and the complete enumeration of ways in which Qwest personnel are able to access LFACS. However, there is no doubt that LFACS contains loop qualification information that Qwest must provide to CLECs on a nondiscriminatory basis.

23. As described in prior testimony, LFACS is the main repository for information on Qwest's loop facilities<sup>39</sup> Among other things, LFACS contains the base

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<sup>31</sup> *Alabama 271 Order*, Att H, ¶ 35

<sup>38</sup> Notarianni/Doherty (Qwest III) Decl ¶ 50

<sup>39</sup> See Finnegan/Connolly/Wilson (Qwest III) Decl ¶ 25

information on loop facilities that will identify spare facilities. Apart from data derived from mechanized loop testing (as described above), LFACS generally represents the most current information on loop characteristics. Thus, LFACS indisputably contains information about loops that can be used by CLECs to make an independent judgment regarding a loop's ability to provide advanced services. Further, there is no dispute that the information in LFACS is "within [Qwest's] back office." Under the Commission's rules, therefore, access to LFACS must be provided so long as it is accessible by "any" of Qwest's personnel.<sup>40</sup>

24 Qwest, however, has failed to provide evidence that shows how all of its personnel can access the LFACS database, and that CLECs have nondiscriminatory access to *all* of the methods by which Qwest employees obtain access to LFACS. According to Qwest, its retail representatives access the LFACS database through a chain of additional applications, including the Loop Qualification Data Base ("LQDB"). *See* Notarianni & Doherty (Qwest III) Reply Declaration ¶ 30 (explaining Figure 12.7). Because CLECs have mediated access to the LQDB through IMA or through a web download capability, CLECs have, in Qwest's view, full and nondiscriminatory access to the LQDB and, in turn, to LFACS. *Id.*

25 However, even if Qwest is correct, its response does not fully answer whether CLECs have the same access to LFACS as "any" Qwest personnel. LFACS is a stand alone system, and there are undoubtedly multiple entry points to LFACS. But rather than disclose all of the systems that Qwest personnel may use to access LFACS, Qwest identifies only a single method used by its retail representatives. Because Qwest has not disclosed this information, CLECs are required to engage in a guessing game to attempt to identify other systems and methods that Qwest personnel use to obtain access to information in LFACS.

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<sup>40</sup> *UNE Remand Order* ¶ 430



26 Nevertheless, as explained in prior testimony, CLECs have discovered that there are in fact additional systems that allow Qwest employees to access LFACS – systems that are *not* being made available to CLECs.<sup>41</sup> Recently, Qwest has finally “acknowledg[ed] that Qwest network technicians have access to LFACS.” *See* Notarianni & Doherty (Qwest III) Reply Declaration ¶ 31. According to Qwest, however, it will not provide similar access to CLECs, because Qwest’s network engineers access LFACS not for “pre-ordering” purposes but for “provisioning purposes.” *Id.*

27. As I understand Qwest’s legal obligation, nothing in the Act or Commission’s rules allow Qwest to limit CLECs’ access to loop qualification information based on Qwest’s unilateral view that the Qwest employees are accessing the data for a certain purpose. Even if that were not true, the line that Qwest attempts to draw between “pre-ordering” and “provisioning” is, in these circumstances, not a meaningful one.

28. As Qwest’s declarants admit, Qwest’s network engineers are accessing LFACS primarily as an assignment tool to determine what circuit can be used.<sup>42</sup> When a question arises as to the correct circuit, Qwest’s engineers can refer to the detailed information in LFACS to see if the circuit in question is appropriate for the services at issue. CLECs need to review LFACS information for the same fundamental reasons: in both cases, CLECs and the Qwest network engineers can access LFACS to determine whether a facility will meet the requirements for the services at issue. The only difference is that Qwest also uses LFACS to

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<sup>41</sup> Finnegan/Connolly/Wilson (Qwest III) Decl. ¶ 27 & Att. 1.

<sup>42</sup> *See* Notarianni/Doherty (Qwest III) Reply Decl. ¶ 31 (LFACS is “used for the assignment of facilities”).

pick and assign a facility (which the CLEC need not do because Qwest does that on behalf of the CLEC)<sup>43</sup>

29. The distinction that Qwest attempts to draw here between LFACS access for “pre-ordering” purposes as opposed to “provisioning” purposes is largely a semantic one. It may be that, when Qwest network engineers examine LFACS, they are doing so after an “order” by a CLEC wholesale customer has been placed. However, the reasons that these engineers refer to LFACS involve the same inquiry that occurs at the pre-order stage: they are obtaining information to determine if a particular circuit is engineered in a way that enables it to provide the type of services, advanced or otherwise, in question. Accordingly, it is simply not true that these Qwest network engineers are never accessing LFACS “for provisioning purposes, not to qualify loops for DSL service.” Notarianni/Doherty (Qwest III) Reply Decl. ¶ 31. CLEC engineers need access to LFACS for essentially the same reasons as Qwest engineers, because LFACS contains the information that will enable them to make an independent judgment regarding whether, and how, the CLEC can provide quality services.

30. The access that Qwest’s network engineers use to qualify particular loops is one additional method by which Qwest employees can access LFACS, but there are likely other methods of access available to Qwest personnel.<sup>44</sup> For example, LFACS is also used to generate reports on spare facilities. Although Qwest has never admitted it, there is likely another Qwest

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<sup>43</sup> There is no merit to the claim that CLECs do not need the same access to LFACS as Qwest’s network engineers because the engineers will “access LFACS on behalf of . . . CLECs.” Notarianni/Doherty (Qwest III) Reply Decl. ¶ 31. The CLECs are entitled to such information to make an “independent determination” about the loop qualification information.

<sup>44</sup> As I stated in prior testimony, the issue here is not, as Qwest tries to frame it, whether Qwest employees have “direct” access to LFACS, such that CLECs must also have “direct” access. Although Qwest engineers *do* have direct access to LFACS, AT&T does not object to accessing LFACS through an interface or through some form of mediated access (such as IMA), as long as AT&T can retrieve information from LFACS to the same extent as Qwest itself (*i.e.*, without having the information “filtered” by Qwest).

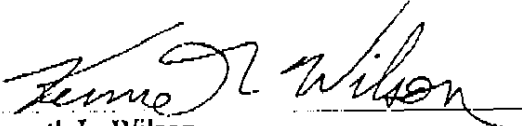
system that works with LFACS to generate reports on spare facilities.<sup>45</sup> But because Qwest will not disclose the names of its systems that access LFACS and how those systems are used by Qwest personnel, it is difficult for CLECs to verify other methods by which Qwest employees access LFACS. Disclosure of such information is critical, because where Qwest employees have multiple methods to access LFACS, then CLECs must have the same nondiscriminatory access.

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<sup>45</sup> As explained in prior testimony, LFACS contains far more information than the Raw Loop Data Tool (“RLDT”) to which CLECs have access, because the RLDT does not contain complete information on loop conditioning and spare facilities that are not connected to the Qwest switch, even though such information is available to Qwest’s own engineers. *See* AT&T (Qwest II) Finnegan/Connolly/Menezes Decl ¶ 144. Qwest’s assertions that the RLDT provides information on spare facilities is simply not backed up by any evidence. *See* AT&T (Qwest III) Finnegan/Connolly/Wilson Decl ¶ 26.

**VERIFICATION PAGE**

I declare under penalty of perjury that the foregoing Declaration is true and correct.

  
Kenneth L. Wilson

Executed on: November 7, 2002